

Certification Standards

The complete Federal Regulations, 49 Code of Federal Regulations, that govern the Disadvantaged Business Enterprise (DBE) program may be found at <http://osdbuweb.dot.gov/business/dbe/index.html>

A firm seeking certification has the burden of demonstrating, by a preponderance of evidence, that it meets these requirements concerning group membership or individual disadvantage, business size, ownership, and control.

Group membership :

If there is reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, that individual must demonstrate that he or she is a member of the group.

Presumption of disadvantage:

It must be rebuttably presumed that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the Small Business Administration (SBA), are socially and economically disadvantaged.

Applicants must submit a signed and notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

Each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification is required to submit a signed and notarized statement of personal net worth, with appropriate supporting documentation. (Appropriate supporting documentation at this time is the last two years' U.S. Individual Income Tax Returns.) In determining net worth, an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence is excluded.

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for DBE certification. A case-by-case determination will be made of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden to establish that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged.

Business size:

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by SBA standards. Current business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firms seeks to perform in DOT-assisted contracts will be applied. A firm is not an eligible DBE in any fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of established size standards. This amount may be adjusted for inflation from time to time.

Ownership:

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, socially and economically disadvantaged individuals must own at least 51 percent of each class of partnership interest, and this must be reflected in the firm's partnership agreement. In the case of a limited liability company, socially and economically disadvantaged individuals must own at least 51 percent of each class of member interest.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as determined by the substance, not merely the form, of arrangements.

Control:

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy, and operations. A disadvantaged owner must hold the highest officer position in the company. In a corporation, disadvantaged owners must control the board of directors. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegation must

be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to the type of business in which the firm is engaged and the firm's operations.